

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

State of Ohio

Court of Appeals No. WD-08-048

Appellee

Trial Court No. 07 CR 470

v.

Steven Orosz, III

DECISION AND JUDGMENT

Appellant

Decided: September 18, 2009

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Gwen Howe-Gebbers, Chief Assistant Prosecuting Attorney, for appellee.

John F. Potts, for appellant.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from a judgment issued by the Wood County Court of Common Pleas following appellant's guilty plea to three counts related to drug offenses. Because we conclude that appellant was advised of his Crim.R. 11 constitutional rights

and the nature of the charges, and the court did not abuse its discretion in the imposition of sentence, we affirm.

{¶ 2} Appellant, Steven Orosz, was indicted by the Wood County Grand Jury on four counts: Count 1 -- engaging in a pattern of corrupt activities, in violation of R.C. 2923.32(A)(1); Count 2 -- trafficking in cocaine, in violation of R.C. 2925.03(A)(1) and (C)(4)(e); Count 3 -- trafficking in cocaine, in violation of R.C. 2925.03(A)(1) and (C)(4)(e); and Count 4 – trafficking in cocaine, R.C. 2925.03(A)(1)and (C)(4)(e), with a specification that the offense was committed within the vicinity of a juvenile. The indictment stemmed from allegations that appellant, with several other persons, sold various amounts of cocaine up to from November 2006 through October 2007. The sales involved telephone calls to set up transactions and that one of the transactions, Count 3, took place in the vicinity of a juvenile.

{¶ 3} Ultimately, pursuant to a plea agreement, appellant pled guilty to Counts 1, 3, and 4; Count 2 was dismissed. The court sentenced appellant to incarceration in the Ohio Department of Rehabilitation and Correction as follows: mandatory ten years as to Count 1; mandatory five years as to Count 3; and mandatory five years as to Count 4. The sentences as to Count 3 and Count 4 were ordered to be served consecutively to each other and concurrently with the sentence in Count 1.

{¶ 4} Appellant now appeals from that judgment, arguing the following three assignments of error:

{¶ 5} "I. It constituted error for the trial court to expressly inform appellant of his constitutional right to have the state prove his guilt beyond a reasonable doubt before accepting appellant's pleas of guilty.

{¶ 6} "II. It constituted error to accept appellant's plea of guilty without determination that appellant understood the nature of the charges against him.

{¶ 7} "III. Imposition of a ten year sentence upon appellant was contrary to law and constituted an abuse of discretion."

I.

{¶ 8} In his first assignment of error, appellant contends that his guilty plea was involuntary and invalid because the trial court failed to properly inform appellant of his rights pursuant to Crim.R. 11(C). Specifically, appellant claims that the trial court did not properly inform him of his right to require that the state prove his guilt beyond a reasonable doubt at trial.

{¶ 9} Before accepting a plea of guilty, Crim.R. 11(C)(2) requires that the trial court inform a defendant of the constitutional rights he waives by entering the plea. *State v. Nero* (1990), 56 Ohio St.3d 106, 107. Crim.R.11(C)(2) provides, in pertinent part, that:

{¶ 10} "(2) In felony cases the court may refuse to accept a plea of guilty or a plea of no contest, and shall not accept a plea of guilty or no contest without first addressing the defendant personally and doing all of the following:

{¶ 11} "* * *

{¶ 12} "* * *

{¶ 13} "(c) Informing the defendant and determining that the defendant understands that by the plea the defendant is waiving the rights to jury trial, to confront witnesses against him or her, to have compulsory process for obtaining witnesses in the defendant's favor, and to require the state to prove the defendant's guilt beyond a reasonable doubt at a trial at which the defendant cannot be compelled to testify against himself or herself."

{¶ 14} The requirements listed in Crim.R. 11(C)(2)(c) are constitutional, and require strict compliance. *State v. Eckles*, 173 Ohio App.3d 606, 2007-Ohio-6220, ¶ 7. Nevertheless, strict compliance does not mean verbatim recitation of the language in Crim.R. 11. See *id.*

{¶ 15} In this case, the transcript of the plea hearing indicates that the trial court began its colloquy with appellant as follows:

{¶ 16} "THE COURT: Let's get to your constitutional rights. You understand that you are presumed innocent until proven guilty beyond a reasonable doubt by the prosecution?"

{¶ 17} "[Appellant]: Yes.

{¶ 18} "THE COURT: Do you understand that you can have a speedy and public trial by a court or jury?"

{¶ 19} "[Appellant]: Yes.

{¶ 20} "THE COURT: Do you understand that at that trial you can see, hear, confront, and cross-examine all witnesses testifying against you?"

{¶ 21} "[Appellant]: Yes.

{¶ 22} "THE COURT: Do you understand that you can use * * * the power and process of the court to compel the production of any evidence or the appearance of any witness to testify in [sic] behalf of your defense?"

{¶ 23} "[Appellant]: Yes.

{¶ 24} After the prosecution narrated the facts in support of the offenses with which appellant had been charged, the court referenced the six page written document entitled "Plea of Guilty to Amended Indictment and Waiver of Trial by Jury." Appellant admitted in court that his signature and initials appeared on that document in three places. The court then asked appellant:

{¶ 25} "Will you confirm to me at this time that you do voluntarily waive and relinquish your Constitutional right to have your case tried by a jury or judge?" Appellant again answered, "Yes."

{¶ 26} Although not a verbatim recitation of the language in the rule, the trial court did inform appellant of his right to be found guilty beyond a reasonable doubt. Therefore, when viewed within the context of the entire colloquy, we conclude that the trial court strictly complied with the requirements of Crim.R.11(C)(2)(c).

{¶ 27} Accordingly, appellant's first assignment of error is not well-taken.

II.

{¶ 28} In his second assignment of error, appellant argues that appellant's plea was involuntary because the trial court failed to determine whether appellant fully understood the nature of the charges against him, specifically Count 1, engaging in a pattern of corrupt activity.

{¶ 29} When a defendant enters a plea in a criminal case, the plea must be made knowingly, intelligently, and voluntarily. *State v. Engle* (1996), 74 Ohio St.3d 525, 527. Before accepting a guilty plea, the trial court must determine, among other things, that the defendant understands the nature of the charges. See Crim.R. 11(C)(2)(a). The underlying purpose of Crim.R. 11 is to convey to the defendant certain information so they can make a voluntary and intelligent decision whether to plead guilty. *State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, ¶ 18. The requirements listed in Crim.R. 11(C)(2)(a) are nonconstitutional, and require only substantial compliance. *Id.*, at ¶ 14, citing *State v. Stewart* (1977), 51 Ohio St.2d 86. "Substantial compliance means that under the totality of the circumstances the defendant subjectively understands the implications of his plea and the rights he is waiving." *Nero*, *supra*, at 108.

{¶ 30} In this case, prior to the plea hearing, appellant received and signed a written plea statement that listed all the offenses from the indictment, the potential penalties, and the details of the plea agreement, along with other information regarding appellant's constitutional rights. At the plea hearing, the trial court inquired whether appellant's counsel had fully discussed the nature of the charges with appellant. Counsel

confirmed that he had discussed the nature of the charges and that discovery had been on-going for 23 months. Counsel said that he and appellant had engaged in multiple discussions of the charges and that appellant fully understood the nature of all the charges. Appellant's counsel also affirmed that, in his opinion, appellant's guilty plea was offered voluntarily, knowingly, and intelligently.

{¶ 31} The prosecutor then related facts in support of the charges. She referred to the "engaging" as the first offense, while narrating the specific facts to support the crimes alleged. From the context of the transcript, it is clear that the prosecutor is referring to Count 1, "engaging in a pattern of corrupt activity." As to the "engaging" offense, the prosecutor stated that testimony from Wood County Sheriff's deputies and a confidential source would have established that appellant, with several other individuals, had engaged in an organization which sold various amounts of cocaine on numerous occasions between November 2006 and October 12, 2007.

{¶ 32} The prosecutor further stated that testimony from witnesses and evidence of recorded telephone conversations would have also established that appellant and a codefendant arranged the cocaine sale transactions. One of the codefendants would have testified that appellant was "the top person, or one of the top two individuals" in the organization who had arranged the transactions and had sent the other codefendants to sell cocaine to the confidential source in Wood County.

{¶ 33} Although the prosecutor did not specifically designate the first offense as "Count 1" at the beginning of her narration, it is clear from the context, she is referring to

that charge, i.e., engaging in pattern of corrupt activity. In addition, appellant's counsel confirmed that appellant understood the nature of the charges. Therefore, based on a totality of the circumstances, we conclude that the trial court substantially complied with Crim.R. 11(C) (2)(a) and appellant's argument is without merit.

{¶ 34} Accordingly, appellant's second assignment of error is not well-taken.

III.

{¶ 35} In his third assignment of error, appellant claims that his sentence was contrary to law and was an abuse of the trial court's discretion. Essentially, appellant contends that the trial court abused its discretion by imposing a maximum sentence for Count 1.

{¶ 36} In *State v. Foster*, the Supreme Court of Ohio, in striking down parts of Ohio's sentencing scheme, held that "[t]rial courts have full discretion to impose a prison sentence within the statutory range and are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than the minimum sentences." 109 Ohio St.3d 1, 2006-Ohio-856, paragraph seven of the syllabus. Thus, an appellate court reviews felony sentences for an abuse of discretion. *Id.* An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. When applying an abuse of discretion standard, an appellate court may not generally substitute its judgment for that of the trial court. See *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶ 37} When sentencing offenders, a trial court must consider the purposes and principles of felony sentencing and the seriousness and recidivism factors under R.C. 2929.11 and 2929.12. *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, ¶ 38. R.C. 2929.11(A) provides that, when sentencing an offender for a felony conviction, a trial court must be guided by the "overriding purposes of felony sentencing * * * to protect the public from future crime by the offender and others and to punish the offender." R.C. 2929.11(B) states that a felony sentence "must be reasonably calculated to achieve the purposes set forth under R.C. 2929.11(A), commensurate with and not demeaning to the seriousness of the crime and its impact on the victim, and consistent with sentences imposed for similar crimes committed by similar offenders." Finally, R.C. 2929.12 sets forth factors concerning the seriousness of the offense and recidivism factors.

{¶ 38} Since the incidents of corrupt activity involved first or second degree felonies, appellant's conviction on Count 1 became a first degree felony. See R.C. 2923.32(B)(1). The prison term for a felony of the first degree "shall be three, four, five, six, seven, eight, nine, or ten years." R.C. 2929.14(A)(1)

{¶ 39} In this case, although the state recommended that appellant receive at least 15 years, the trial court sentenced appellant to ten years for Count 1, a first degree felony. Therefore, the sentence imposed for Count 1 was not contrary to law since it was within the range provided by statute. In addition, the court specifically considered each of the sentencing guidelines, noting that appellant's offenses were part of an organized criminal activity and that he has a history of criminal convictions related to the sale of drugs.

Therefore, the sentence imposed for Count 1 was not an abuse of the trial court's discretion.

{¶ 40} Accordingly, appellant's third assignment of error is not well-taken.

{¶ 41} The judgment of the Wood County Court of Common Pleas is affirmed.

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Mary J. Boyle, J.
CONCUR.

JUDGE

Judge Mary J. Boyle, Eighth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.